IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2007

CORAM

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Criminal Original Petition No.34592 of 2007
and Miscellaneous Petition No.1 of 2007

1. Vijayalakshmi
2. Kandasamy
3. Viswanathan
4. Ammasai Gounder ... Petitioners

-Vs-

1. Mylsamy @ Palanisamy
2. The State of Tamil Nadu
   Rep. by its Public Prosecutor .. Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Criminal Procedure Code against the order dated 11.06.2007 in Crl.R.C.No.32 of 2007 on the file of the Additional District Sessions Judge, Fast Track Court No.1, Coimbatore, preferred against the order dated 12.12.2006 in Crl.M.P.No.5851 of 2006 in C.C.No.1049 of 2004 on the file of the Judicial Magistrate, Coimbatore.

For Petitioners : Mr. C.R.Prasanan

For Respondents : Mr. Hasan Mohamed Jinnah
Govt. Advocate (Crl.Side), for R-2.

O R D E R

The petitioners in the above criminal original petition are the accused in C.C.No.1049 of 2004 on the file of the Judicial Magistrate No.I, Coimbatore. The first respondent herein had filed a private complaint against the petitioners herein and the said private complaint had been taken on file for the offence under Sections 147, 447, 506 (ii) and 379 of the Indian Penal Code. On 18.02.2006 the learned Magistrate had framed charges against petitioners 1 to 4 for the offence under Sections 147 and 379 of the Indian Penal Code and under Section 148 of the Indian Penal Code against petitioners 2 to 4 and under Section 447 of the Indian Penal Code against petitioners 1 to 4 and under Section 506 (ii) against the first petitioner. At that stage the petitioners have filed a

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petition under Section 245 of the Criminal Procedure Code seeking discharge on the ground that civil suits are pending between the petitioners and the first respondent in O.S.Nos.1323 of 1988 and 1230 of 1995 and C.R.P.No.555 of 2002 is also pending before the High Court and in such circumstances, according to the petitioners, the charges should not have been framed. The said petition came to be dismissed by the learned Magistrate by observing that the case is pending right from the year 2004 and the case is posted for 'further proceedings', the complainant has lodged that on 25.04.2004 the accused unlawfully entered into the land of the complainant and the complainant was threatened by the accused and the veracity of the allegations can be gone into only after taking evidence and at this stage the petition cannot be allowed as there is a prima facie case against the accused.

2. Being aggrieved by that the petitioners filed a criminal revision case No.32 of 2007 before the Fast Track Court No.I, (Additional Sessions Judge), Coimbatore. The revisional court has upheld the order of the learned Magistrate and dismissed the revision. Being aggrieved by that the petitioners have filed the above criminal original petition invoking the jurisdiction of this Court under Section 482 of the Criminal Procedure Code.

3. Heard Mr. C.R.Prasanan learned counsel for the petitioners.

4. Learned counsel for the petitioners submitted that admittedly civil suits are pending between the petitioners and the first respondent herein and a civil revision petition is also pending before this Court and the dispute between the petitioners and the first respondent relates to the land in question in respect of which the offence of trespass is said to have been committed. According to the learned counsel when the very possession is in question before the civil Court, the criminal case ought not to have been entertained and the same amounts to abuse of process of Court. Except the above said submissions no other submissions have been made by the learned counsel for the petitioners.

5. I have carefully considered the above said submissions made by the learned counsel for the petitioners. At the outset it has to be pointed out that already the petitioners have filed a revision before the Sessions Court against the order of the learned Magistrate dismissing the discharge petition filed by the petitioners and as such a second revision at the instance of the accused / petitioners is barred under Section 399(3) of the Criminal Procedure Code. To get over the said statutory bar the petitioners have filed the above petition invoking the powers of this Court under Section 482 of the Criminal Procedure Code.

6. In the decision reported in (1995) 5 SCC 751 (Deepti v. Akhil Rai), the Honourable Apex Court has laid down as follows:-

> "The High Court also should have taken care to verify the record before accepting the concession made by the learned Government Advocate. It should have also applied

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its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside".

7. In yet another decision of the Apex Court reported in (1995) 4 SCC 41 (Ganesh Narayan Hegde v. S. Bangarappa), the Honourable Apex Court has observed in paragraph 12 as under:-

"12. While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges."

8. Thus it is clear that a second revision is not maintainable. If a party was unsuccessful in the revision filed by him, by invoking the extraordinary inherent power of this Court under Section 482 of the Criminal Procedure Code, this Court can interfere with, when it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges. The case on hand is not one such case where if the further proceedings are allowed to be continued it will amount to abuse of process of Court. Both the learned Magistrate and the Sessions Judge have considered the contentions put forth by the petitioners herein and have come to the conclusion that a prima facie case is made out and the trial has to be conducted on the charges framed against the petitioners.

9. The main contention of the learned counsel for the petitioners is that since civil proceedings are pending between the petitioners and the first respondent, the continuance of the criminal case will amount to abuse of process of the Court. It is settled law that if prima facie a case is made out on the complaint filed by the complainant and offences are made out, there is no bar for continuing with the criminal case inspite of the fact that a civil case is pending between the complainant and the accused. Therefore the said contention of the learned counsel for the petitioners is liable to be rejected and accordingly rejected. It is made clear that this Court has not expressed its opinion on the merits of the case.

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10. For the above said reasons, the criminal original petition fails and the same is dismissed. Consequently the connected MP is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

srk

To

1. The Additional District Sessions Judge,
Fast Track Court No.1,
Coimbatore,

2. The Judicial Magistrate, Coimbatore

3. The Public Prosecutor, High Court, Madras.

1 cc To Mr.C.R.Prasanan, Advocate, SR.70848.

Crl.O.P.No.34592 of 2007
and M.P.No.1 of 2007

MA(CO)
RVL 06.12.2007

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